

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nov 17, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

GREGORIO CANTU,

Defendant.

No. 1:22-CR-02109-SAB-1

ORDER DENYING THE UNITED
STATES' MOTION FOR
DETENTION

ECF No. 15

On Tuesday, November 15, 2022, the Court conducted a hearing on the United States' Motion for Detention (ECF No. 15). Defendant was represented by court-appointed attorney Greg Scott. Assistant United States Attorney Frances Walker represented the United States. With Defendant's consent, Defendant appeared by video from Yakima, Washington.

The Court has considered the Indictment (ECF No. 1), the Pretrial Services Report (ECF No. 32), and the arguments of counsel.

The United States contended that if released, Defendant would present both a risk of nonappearance and a danger to the safety of the community. Defendant, through counsel, contended there are conditions the Court could impose that would reasonably assure his appearance as required and the safety of the community if released.

The United States' Motion for Detention invoked the presumption for

1 detention pursuant to 18 U.S.C. § 3142(f)(1)(A). ECF No. 15. However, at a co-
2 defendant's arraignment hearing, the Court heard arguments from the co-defendant
3 and the United States and subsequently determined that neither 18 U.S.C. §
4 3142(f)(1)(A) nor 18 U.S.C. § 2332b(g)(5)(B) are applicable to this case. ECF No.
5 33. However, the United States proffered that Defendant and codefendant have
6 exchanged threats between one another, and the Court finds that this proffer
7 satisfies the prima facie requirements to hold a detention hearing pursuant to 18
8 U.S.C. § 3142(f)(2). *Id.* With the prima facie requirements of § 3142(f)(2)(B)
9 satisfied, the issue before the Court is "whether any condition or combination of
10 conditions . . . will reasonably assure the appearance of such person as required
11 and the safety of any other person and the community." 18 U.S.C. § 3142(f).

12 The Court has evaluated the four factors outlined in 18 U.S.C. § 3142(g) to
13 determine whether there are conditions of release that would reasonably assure
14 Defendant's appearance in court and the safety of the community: (1) the nature
15 and circumstances of the offense; (2) the weight of evidence against Defendant; (3)
16 the history and characteristics of Defendant; and (4) the nature and seriousness of
17 the danger Defendant would present to the community if released.

18 As to the first factor, Defendant is charged with two counts of setting fire to
19 local businesses in violation of 18 U.S.C. § 844(i). This type of activity presents
20 the Court with a profound concern for the safety of the community. Therefore, this

1 factor weighs in favor of detention.

2 As to the second factor, the weight of the evidence is the least important
3 factor and Defendant is entitled to a presumption of innocence. However, the
4 United States' proffer of admittance by a codefendant to the alleged offenses
5 indicates a strong case. Therefore, this factor weighs in favor of detention.

6 As to the third factor, Defendant does not have an extensive criminal history,
7 with his last conviction occurring on August 28, 1999. As to his personal
8 characteristics, Defendant has extensive ties to the community and had been
9 working full-time prior to his arrest. And while the Pretrial Services Report shows
10 indicates that Defendant has exchanged threats with his codefendant, the threats
11 from Defendant have not resulted in criminal charges. Therefore, this factor
12 weighs in favor of release.

13 As to the fourth factor, while the underlying offense presents the Court with
14 concern as to Defendant's risk of danger to the community, there are conditions
15 which can mitigate this risk. Therefore, this factor weighs in favor of release.

16 The Court finds that the United States has not established by the required
17 preponderance of evidence an absence of conditions or combination of conditions
18 of release that would reasonably assure Defendant's presence at trial. Furthermore,
19 the United States has not established by clear and convincing evidence that
20 Defendant poses a present risk to the safety of other persons or the community that

1 cannot be mitigated by conditions or a combination of conditions of release.

2 Accordingly, **IT IS ORDERED:**

3 1. The United States' Motion for Detention, **ECF No. 15**, is **DENIED**.

4 2. If a party desires this Court to reconsider conditions of release because
5 of material and newly discovered circumstances pursuant to 18 U.S.C. § 3142(f),
6 that party shall file a maximum four-page motion for reconsideration succinctly
7 stating what circumstances are new, how they are established, and the requested
8 change in conditions of release. The motion shall indicate whether opposing
9 counsel; United States Probation/Pretrial Services; or another party with a
10 substantial interest in the motion object, whether a hearing is desired, and whether a
11 supplemental pretrial services report is requested. If the moving party, after the
12 exercise of due diligence, is unable to determine the position of opposing counsel;
13 United States Probation/Pretrial Services; or another party with a substantial interest
14 in the motion, the moving party may in the alternative document the date; time; and
15 manner of each effort made to determine that party's position. This Court will treat
16 the motion as expedited and submitted without argument, and will set a hearing or
17 issue other orders as may be appropriate.

18 3. If a party seeks review of this Order by another court pursuant to 18
19 U.S.C. § 3145(a), counsel shall adhere to the Detention Order Review Protocol
20 found in LCrR 46(k).

1 4. Defendant is bound over to Judge Stanley A. Bastian for further
2 proceedings.

3 5. Defendant shall abide by the following conditions at all times:

4 **STANDARD CONDITIONS OF RELEASE**

5 1. Defendant shall not commit any offense in violation of federal, state,
6 or local (including tribal) law. Defendant shall advise the supervising United
7 States Probation/Pretrial Services Officer and defense counsel within one business
8 day of any charge, arrest, or contact with law enforcement. Defendant shall not
9 work for the United States government or any federal or state law enforcement
10 agency unless Defendant first notifies the supervising United States
11 Probation/Pretrial Services Officer in the captioned matter.

12 2. Defendant shall immediately advise the Court and the United States
13 Attorney in writing before any change in address.

14 3. Defendant shall appear at all proceedings and surrender as directed for
15 service of any sentence imposed.

16 4. Defendant shall sign and complete form A.O. 199C before being
17 released.

18 5. Defendant shall not possess a firearm, destructive device, or any
19 dangerous weapons.
20

1 6. Defendant shall report to the United States Probation/Pretrial Services
2 Office before or immediately after release and shall report as often as they direct,
3 at such times and in such manner as they direct.

4 7. Defendant shall contact defense counsel at least once a week.

5 8. Defendant shall refrain from use or unlawful possession of a narcotic
6 drug or other controlled substances defined in 21 U.S.C. § 802, unless prescribed
7 by a licensed medical practitioner in conformance with Federal law. Defendant
8 may not use or possess marijuana, regardless of whether Defendant has been
9 authorized medical marijuana under state law.

10 9. Defendant shall surrender any passport to United States
11 Probation/Pretrial Services and shall not apply for a new passport.

12 10. Defendant is further advised it is unlawful for any person who is
13 under indictment for a crime punishable by imprisonment for a term exceeding one
14 year, to receive, ship or transport in interstate or foreign commerce any firearm or
15 ammunition or receive any firearm or ammunition which has been shipped or
16 transported in interstate or foreign commerce.

17 **SPECIAL CONDITIONS OF RELEASE**

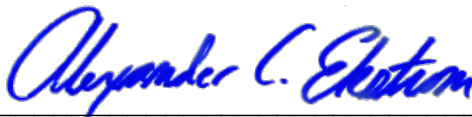
18 1. Defendant shall remain in the Eastern District of Washington unless
19 given permission by the United States Probation/Pretrial Services Office.

1 2. Defendant shall notify the United States Probation/Pretrial Services
2 Office within 24 hours of any change in address, telephone number, or
3 employment.

4 3. Defendant shall avoid all contact, direct or indirect, with any
5 codefendants or persons who Defendant would reasonably know are or may
6 become a victim or potential witness in the subject investigation or prosecution.

7 **IT IS SO ORDERED.**

8 DATED November 17, 2022.

A handwritten signature in blue ink, reading "Alexander C. Ekstrom", is written over a horizontal line.

ALEXANDER C. EKSTROM

UNITED STATES MAGISTRATE JUDGE